

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**JTH TAX, INC. d/b/a LIBERTY TAX  
SERVICE,**

**Plaintiff,**

**v.**

**Civil No. 2:11cv59**

**TROY CLARK, and  
SOUTHWEST TAX STORES, LLC,**

**Defendants.**

**Third Declaration of Sarah Bosko**

Pursuant to 28 U.S.C. § 1746, I, Sarah Bosko, declare under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen (18) years and am fully competent to testify to the matter stated in this declaration. This declaration is based upon my personal knowledge, Liberty's corporate and business records, and information available from Liberty's employees and agents.

2. I am a Corporate Paralegal for JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty") and a custodian of the records of its Legal Department. I have held this position since November 2010.

3. On May 23, 2011, Liberty conducted a deposition of Troy Clark in Albuquerque, New Mexico in this case. I personally attended and witnessed this deposition.

4. Attached as Exhibit 1 are true and correct copies of select pages from Volume 1 of the deposition transcript of Troy Clark dated May 23, 2011.

5. Attached as Exhibit 2 are true and correct copies of select pages from Volume 2 of the deposition transcript of Troy Clark dated May 23, 2011.

6. On May 23, 2011, Liberty conducted a deposition of Tom Costigan in Albuquerque, New Mexico in this case. I personally attended and witnessed this disposition. Attached as Exhibit 3 are true and correct copies of select pages from the deposition transcript of Tom Costigan dated May 23, 2011.

7. On May 24, 2011, Liberty conducted a deposition of Kim Gutierrez in Albuquerque, New Mexico in this case. I personally attended and witnessed this deposition. Attached as Exhibit 4 are true and correct copies of select pages from the deposition transcript of Kim Gutierrez dated May 24, 2011.

8. On or about June 10, 2011, I ordered certified copies of the corporation documents for Freedom Tax, LLC from the New Mexico Public Regulation Commission. Attached as Exhibit 5 are true and copies of the Articles of Organization for Freedom Tax, LLC from the New Mexico Public Regulation Commission.

9. Attached as Exhibit 6 is a true and correct copy of the "Asset Purchase Agreement" provided to Liberty by Troy Clark through discovery.

10. Attached as Exhibit 7 is a true and correct copy of the "Promissory Note" Clark provided to Liberty pursuant to its discovery request.

11. Attached as Exhibit 8 is a true and correct copy of the lease for 475 Coors Boulevard Albuquerque, New Mexico, discussed at the deposition of Troy Clark on May 23, 2011 and Kim Gutierrez on May 24, 2011.

12. Attached as Exhibit 9 is a true and correct copy of the lease for 1009 Golf Course Rd. Albuquerque New Mexico, produced by Clark through discovery.

13. Attached as Exhibit 10 is a true and correct copy of the lease for 3118 San Mateo Blvd. Albuquerque, New Mexico, discussed at the deposition of Troy Clark on May 23, 2011 and Kim Gutierrez on May 24, 2011.

14. Attached as Exhibit 11 is a true and correct copy of the lease for 1449A Eubank Boulevard, Albuquerque, New Mexico, discussed at the deposition of Troy Clark on May 23, 2011 and Kim Gutierrez on May 24, 2011.

15. Attached as Exhibit 12 is a true and correct copy of the lease for 2130 San Mateo, Albuquerque, New Mexico, discussed at the deposition of Troy Clark on May 23, 2011 and Kim Gutierrez on May 24, 2011.

16. Attached as Exhibit 13 are true and correct copies of Freedom Tax checks signed by Troy Clark and discussed at the deposition of Troy Clark on May 23, 2011.

17. Attached as Exhibit 14 are true and correct copies of "Release of Information" forms filled out by Liberty customers requesting copies of their tax information. These documents were produced by Clark pursuant to Liberty's discovery request.

18. According to "Google Maps," the Freedom Tax office located at 2130 San Mateo Boulevard NE, Suite G, Albuquerque, New Mexico 87110 is .3 miles away from Liberty franchisee Michael Weiss's tax preparation office located at 2013 San Mateo Boulevard NE, Albuquerque, New Mexico 87110. Attached as Exhibit 15 is a true and correct copy of the web page found at <http://maps.google.com/maps?hl=en&tab=wl> which shows the distance between the two offices.

19. On July 18, 2011, I accessed Liberty's ZeeNet system and printed the "Tax Year 2010 Filing Status Flow Chart" document which Liberty franchisees distribute to customers. Attached as Exhibit 16 is a true and correct copy of the "Tax Year 2010 Filing Status Flow Chart."

20. On July 18, 2011, I accessed Liberty's ZeeNet system and printed the "Product Information Sheet - Republic Bank" document which Liberty franchisees distribute to

customers. Attached as Exhibit 17 is a true and correct copy of the “Product Information Sheet - Republic Bank.”

21. Attached as Exhibit 18 is a true and correct copy of the January 20, 2011 letter Liberty sent letters via UPS Overnight Delivery to Freedom Tax Service, LLC, attention to Kim Gutierrez at 3118 San Mateo Blvd. NE, Albuquerque, New Mexico 87110; 475 Coors Blvd. NW, Suite D, Albuquerque, New Mexico 87121; 1449A Eubank Blvd, NE, Albuquerque, New Mexico 87112; and 1009 Gold Course Road, Suite 104, Rio Rancho, New Mexico 87124 concerning their infringement of the following Liberty registered trademarks:

- a. “Liberty Tax Service” – registration date February 1, 2000 (reg. no. 2,314,991).
- b. “Liberty Tax” – registration date July 3, 2001 (reg. no. 2,465,670).
- c. “Liberty Tax Service” with design – registration date August 21, 2001 (reg. no. 2,479,692).
- d. Statue of Liberty costume for tax preparation services – registration date November 7, 2006 (reg. no. 3,167,134).
- e. Uncle Sam costume for tax preparation services- registration date December 16, 2008 (reg. no. 3,545,630).

22. Attached as Exhibit 19 is a true and correct copy of a printout of the gross fees from tax returns for Freedom Tax from February 1, 2011 through April 19, 2011 produced during discovery.

23. Attached as Exhibit 20 is a true and correct copy of a phone bill for Freedom Tax, LLC dated November 25, 2010.

24. Attached as Exhibit 21 is a true and correct copy of the general ledger for Freedom Tax Service.

25. Attached as Exhibit 22 are true and correct copies of emails between Troy Clark and Kim Gutierrez produced during discovery.

Executed on this 2 day of July 2011.

  
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Sarah Bosko

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of August 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Todd Gaynor, Esq. (VSB # 47742)  
Taylor & Walker, P.C.  
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/s/  
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